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Baker Botts LLP 2001 Ross Avenue Dallas, TX 75201-2980			BELL, PAUL A	
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			3628	

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/548,466

**Applicant(s)**

DALEL ET AL.

**Examiner**

PAUL A BELL

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12/29/03 Appeal Brief.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

DETAILED ACTION

Response to Arguments

1. In view of the APPEAL BRIEF filed on 12/29/2003, PROSECUTION IS HEREBY REOPENED. As set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

2. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 63- 92 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter wherein the rejected claims are directed to a claim for software.

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Accordingly, it is important to distinguish claims that define descriptive material per se (software) from claims that define statutory inventions.

Note Computer programs or software can be recited as being part of a claim that is otherwise a statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program or software is included in the claim.

Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory.

"Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material." (SEE MPEP 2106 IV B 1 (a)).

"When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat the claim as a process claim. " (See paragraph IV.B.2(b))

"When a computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim." Of which is the case here (See parts applicable of paragraph IV.B.2(a) below)

"(a) Statutory Product Claims Products may be either machines, manufactures, or compositions of matter."

"A machine is "a concrete thing, consisting of parts or of certain devices and combinations of devices."

"Office personnel must treat each claim as a whole. The mere fact that a hardware element is recited in a claim does not necessarily limit the claim to a specific machine or manufacture."

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2, 5-7, 11, 15, 16, 19-21, 25, 29-32, 35-37, 41, 42, 45, 46, 49-51, 55, 56, 63, 64, 67-69, 73, 74, 78, 79, 82-84, 88, 89, and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt), in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz) AND Dr. Pattie Maes et al. , "AGENTS THAT BUY AND SELL", Communications of the ACM, March 1999, Vol. 42, No. 3 (hereafter Maes ).

Claims 1 and 15,: Schmidt discloses a method of multi-enterprise optimization at a buyer and seller computers, comprising:

accessing a forecasted demand for at least one item (SEE Schmidt Page 3, line 25-page 4, line 8);

generating one or more proposed flexible trade contracts using the forecasted demand for the item (SEE Schmidt Page 28, lines 35-40);

communicating each proposed flexible trade contract to a seller computer (SEE Schmidt "...generates replenishment ...report...", page 20, line 50-page 30, line 41);

and executing a flexible trade contract created after acceptance of the proposed flexible trade contract at -the seller computer (SEE Schmidt "...the execution started...", Page 30, line 43-page 32, line 38).

Schmidt also disclose "receiving modification of the contracts", "proposed flexible trade contracts", "created a flexible trade contract" (SEE Schmidt Page 30, lines 19-23), "evaluating a modified contract" (SEE Schmidt Page 28, line 39, and page 30, line 20), and "redefinition of requirements of the contract" (SEE Schmidt Page 28, line 46), as well as "price discounts" in the framework of a negotiation (SEE Schmidt Page 51, line 55).

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

However, Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49 "A further use of the capabilities of this system is to manage a user's investment portfolio." . . . "The user's past investment behavior is characterized in the user's search profile set or target profile interest summary, and this information is used to match the user with stock opportunities (target objects) similar in nature to past investments." . . . "Furthermore,

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the user can set filter parameters so that the system can monitor stock prices and automatically take certain actions, such as placing buy or sell orders, or paging the user with a notification, when certain stock performance characteristics are met.” . . . “Thus, the system can immediately notify the user when a selected stock reaches a predetermined price, without the user having to monitor the stock market activity” ).

Maes teaches; “**Software** agent technologies can be used to automate several of the most time-consuming stages of the buying process”...”In other markets (such as **stocks**, automobiles, and fine art), the negotiation of price and other aspects to the buying are integral to the buying process”.....”In automated negotiation, computational agents find and prepare **contracts** on behalf of the real-world parties they represent. This automation saves human negotiation time, and computational agents are often better at finding deals in combinatorially and strategically complex settings. . . .When different users have different preferences, automated negotiation can rapidly find solutions that improve the utility for all parties” . . .” Kabah’s agents automate much of the merchant-brokering and negotiation stages for both buyers and sellers”.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer

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computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 2 and 16: Schmidt / Herz / Maes disclose the methods of Claims 1 and 15. Schmidt also explicitly discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (SEE Schmidt option contract, Page 28, lines 35-40).

Claim 5 and 19: Schmidt / Herz / Maes disclose the methods of Claims 2 and 16. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (SEE Schmidt Page 81, lines 4-19, "...maximal inventory...").

Claims 6 and 20: Schmidt / Herz / Maes disclose the method of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises a unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location (SEE Schmidt Page 81, lines 20-33).

Claim 7 and 21: Schmidt / Herz / Maes disclose the methods of Claims 5 and 19. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34-page 82, line 32).



Claims 11 and 25: Schmidt / Herz / Maes disclose the methods of Claims 1 and 15. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt Page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt Page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt Page 50, line 60- Page 51, line 15). However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input, i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract , which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 29, 45, 63, 58, and 78: Schmidt / Herz / Maes discloses a supply manager for multi-enterprise optimization, comprising:

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- a) a negotiation module operable to receive one or more proposed flexible trade contracts from a buyer computer (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- b) each proposed flexible trade contract reflecting a buyer's forecasted demand for at least one item (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44);
- c) the negotiation module also operable to accept the proposed flexible trade contract to create a flexible trade contract (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39 - 44); and
- d) an execution module operable to execute the flexible trade contract (SEE Schmidt Page 3, line 26 - Page 4, line 8; Page 28, line 35 - Page 31, line 37, lines 39-44).

However, Schmidt does not explicitly disclose that those steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

However, Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" (SEE Herz Col. 61, lines 18-49 "A further use of the capabilities of this system is to manage a user's investment portfolio." . . . "The user's past investment behavior is characterized in the user's search profile set or target profile interest summary, and this information is used to match the user with stock opportunities (target objects) similar in nature to past investments." . . . "Furthermore, the user can set filter parameters so that the system can monitor stock prices and automatically take certain actions, such as placing buy or sell orders, or paging the user

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with a notification, when certain stock performance characteristics are met.” . . . “Thus, the system can immediately notify the user when a selected stock reaches a predetermined price, without the user having to monitor the stock market activity” ).

Maes teaches; “**Software** agent technologies can be used to automate several of the most time-consuming stages of the buying process”...”In other markets (such as **stocks**, automobiles, and fine art), the negotiation of price and other aspects to the buying are integral to the buying process”.....”In **automated negotiation**, computational agents find and prepare **contracts** on behalf of the real-world parties they represent. This automation saves human negotiation time, and computational agents are often better at finding deals in combinatorially and strategically complex settings. . . .When different users have different preferences, automated negotiation can rapidly find solutions that improve the utility for all parties” . . .” Kabah’s agents automate much of the merchant-brokering and negotiation stages for both buyers and sellers”.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claims 30 Schmidt / Herz / Maes disclose a procurement -manager for multi-enterprise optimization, comprising: a negotiation module operable to receive a forecasted demand for at least one item (See Schmidt Page 3; line 25-page 4, line 8)

Claim 31: Schmidt / Herz / Maes disclose the method of procurement of Claim 29. Schmidt also discloses wherein the negotiation module receives the forecasted demand from a user, and a forecast module operable to determine the forecasted demand (SEE Schmidt Page 82, line 11-page 83, line 20, and page 84, line 21-page 87, line 50).

Claims 32, 46, 64, and 79: Schmidt / Herz / Maes disclose the methods of procurement of Claims 29, 45, 63, and 78. Schmidt also discloses wherein each proposed flexible trade contract is selected from the group consisting of a forward contract, an option contract, and a flexible forward contract (SEE Schmidt Page 28, lines 35-40).

Claims 35, 49, 67, and 82: Schmidt / Herz / Maes disclose the method of procurement of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each option contract comprises an option, the option comprising at least one parameter selected from the group consisting of a maximum quantity of the item that a seller is obligated to supply; a maximum number of item types that the seller is obligated to supply; and a maximum number of locations where the item must be provided (SEE Schmidt Page 81, lines 4-19, "maximal inventory" ).

Claims 36, 50, 68, and 83: Schmidt / Herz / Maes disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises a

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unit option contract, and wherein the parameter is selected from the group consisting of a maximum of one unit of the item; a maximum of one item type; and a maximum of one location { SEE Schmidt Page 81, lines 20-33).

Claims 37, 51, 69, and 84: Schmidt / Herz / Maes disclose the method of Claims 35, 49, 67, and 82. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option (SEE Schmidt Page 81, line 34-page 82, line 32):

Claims 41 and 42: Schmidt / Herz / Maes disclose the procurement of Claims 29 and 45. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms (SEE Schmidt page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt page 50, line 60-col. 51, line 15).

Claims 55, 56, 73, 74, 88, and 89: Schmidt / Herz / Maes disclose the procurement of Claims 29, 45, 63, and 78. Schmidt also discloses: receiving an alternate contract term from the seller computer (SEE Schmidt Page 50, lines 45-57); accepting the alternate contract term without user input if the alternate contract term falls within a range of acceptable contract terms ( SEE Schmidt Page 50, lines 58-60); and identifying the alternate contract term as requiring user input if the alternate contract term falls outside the range of acceptable contract terms (SEE Schmidt Page 50, line 60-col. 51, line 15). However, Schmidt does not explicitly disclose that those

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steps are made "automatically and without user input", i.e. steps are conducted automatically by the seller computer and the buyer computer.

Herz discloses the automatic negotiation between computers, i.e. "automatically and without user input" SEE Herz Col. 61, lines 18-49). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to allow sellers computer and the buyer computer in Schmidt to automatically and without user input negotiate the contract, which would also include any updated versions. One would have been motivated to including the automatic negotiation of the contracts between the seller computer and the buyer computer in order to reduce the cost of the procurement units as well as to reduce the time needed to obtain the items.

Claim 91: Schmidt / Herz / Maes anticipates the software of Claim 78, However, the references do not explicitly disclose wherein receiving one or more proposed flexible trade contracts from the buyer computer system comprises receiving one or more proposed flexible trade contracts from the buyer computer system through an intermediary. Official notice is taken that the step to negotiate through an intermediary is all and well know within the art. Therefore, it would have been obvious to use the service of an intermediary in the Schmidt / Herz / Maes invention. One would have been motivated to use the service of an intermediary, i.e. a blocker, in order to guarantee the anonymity of the operators-, and/or a high standard of professionalism in the real estate operations, where there are different roles and issues in the different cities, such as "sponsorization' in a new condo building in New York city, etc.

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9. Claims 3, 4, 8-10, 12-14, 17, 18, 22-24, 26-28, 33, 34, 38-40, 43, 44, 47, 48, 52-54, 57-62, 65, 66, 70-72, 75-77, 80, 81, 85-87, 90, and 92-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al. (EP 0770 967) (hereafter Schmidt) in view of Herz et al. (US Patent No. 5,754,938) (hereafter Herz) AND Dr. Pattie Maes et al. , "AGENTS THAT BUY AND SELL", Communications of the ACM, March 1999, Vol. 42, No. 3 (hereafter Maes ), and further view of Shepherd (U.S. Patent No. 5,970,479).

Claims 3 and 17: Schmidt / Herz / Maes disclose the method of Claims 2 and 16. However, the references do not explicitly disclose wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt / Herz / Maes method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 4 and 18: Schmidt / Herz / Maes / Shepherd disclose the method of Claims 3 and 17. However, Schmidt does not explicitly disclose wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention

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was made to include such a step in the Schmidt / Herz / Maes method. One would have been motivated to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 8 and 22: Schmidt / Herz/ Maes / Shepherd disclose the method of Claims 2 and 16 above. Shepherd discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; and a plurality of subcontracts each comprising an option, each option comprising at least one parameter selected from the group consisting of a range of quantities for one item; a range of quantities for one item type; and a range of quantities for one location where the item must be provided (SEE Shepherd Col. 49, lines 27-40 and col. 50, lines 10-27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt / Herz/ Maes/ Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 9 and 23: Schmidt / Herz / Maes / Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (SEE Shepherd Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a



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step in the Schmidt / Herz / Maes / Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 10 and 24: Schmidt / Herz / Maes / Shepherd disclose the method of Claims 8 and 22 above. Shepherd discloses wherein each flexible forward contract comprises an exercise period after the execution of the flexible forward contract during which the buyer must exercise the option (SEE Shepherd Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt/Herz/Maes/Shepherd method. One would have been motivated to use such a step in order to minimize the risk.

Claims 12 and 26: Schmidt / Herz / Maes disclose the method of Claims 1 and 15. However, the references do not explicitly disclose updating the forecasted demand for the item; and exercising an option in the flexible trade contract based on the updated forecasted demand. Shepherd discloses such steps (SEE Shepherd Col. 55, lines 60-64). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt /Herz/ Maes method. One would have been motivated to use such a step in order to minimize the risk.

Claims 13, 14, 27 , 28 , 44, 58, 75 and 76: Schmidt / Herz / Maes disclose the method of Claims 1, 15, 29, 45 and 63. However, Schmidt does not explicitly disclose calculating a penalty if a seller fails to comply with a term of the flexible trade contract nor wherein communicating each proposed flexible trade contract to the seller computer comprises communicating each proposed flexible trade contract to the seller computer

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through an intermediary. Shepherd discloses such steps (SEE Shepherd Col. 55, line 65-col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt method. One would have been motivated to use such a step in order to minimize the risk.

Claims 33, 47, 65, and 80: Schmidt / Herz / Maes disclose the method of procurement of Claims 32, 46, 64, and 79. However, the references does not explicitly discloses wherein each forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply. Shepherd discloses such as a step (SEE Shepherd Col. 2, lines 28-32). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt / Herz / Maes method. One would have been motivated, to use such a forward contract comprises a quantity of the item that a buyer is obligated to purchase and a seller is obligated to supply in order to minimize the risk.

Claims 34, 48, 66, and 81: Schmidt / Herz / Maes / Shepherd disclose the method of procurement of Claims 33,47, 65, and 80. Schmidt also discloses wherein each forward contract comprises a unit forward contract, and wherein the buyer is obligated to purchase and the seller is obligated to supply a quantity of one unit of the item (SEE Schmidt Page 81, lines 20-33).

Claims 38, 52, 70, and 85: Schmidt / Herz / Maes disclose the method of Claims 32, 46, 64, and 79. Schmidt also discloses wherein each flexible forward contract comprises a total quantity of one or more items that a buyer is obligated to purchase and a seller is obligated to supply; a range of quantities for one item; a range of

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quantities for one item type; and a range of quantities for one location where the item must be provided (SEE Schmidt page 96, lines 15-27). However, Schmidt does not explicitly disclose a plurality of subcontracts each comprising an option, each option comprising at least one parameter. Shepherd discloses such as a step (SEE Shepherd Col. 49, lines 27-col. 50, line 27). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such a step in the Schmidt/Herz method.

Claims 39, 53, 71, and 86: Schmidt / Herz / Maes / Shepherd disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each flexible forward contract comprises a unit flexible forward contract, and wherein the total quantity is one unit and the parameter is selected from the group consisting of a range of zero to one unit for the item; a range of zero to one unit for the item type; and a range of zero to one unit for the location (SEE Schmidt Page 66, line 18-page 67, line 50).

Claims 40, 54, 72, and 87: Schmidt / Herz / Maes / Shepherd- disclose the procurement manager of Claims 38, 52, 70, and 85. Schmidt also discloses wherein each option contract comprises an exercise period after the execution of the option contract during which a buyer must exercise the option ( SEE Schmidt Page 81, line 34-page 82, line 32)..

Claims 43, 57, and 90: Schmidt / Herz / Maes disclose the method and software of procurement of Claims 29, 45, 63, 78. However, the references does not explicitly disclose tracking module operable to calculate a penalty if a seller fails to comply with a

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term of the flexible trade contract nor a tracking module operable to calculate a penalty if a seller fails to comply with a term of the flexible trade contract. Shepherd discloses such steps (SEE Shepherd Col. 55, line 65col. 56, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to include such steps in the Schmidt/Herz/Maes method. One would have been motivated to use such a step in order to minimize the risk.

Claims 59, 60, 61, 62, 77, and 92: Schmidt / Herz / Maes / Shepherd disclose the methods and software of procurement of Claims 1, 15, 29, 45, 63, and 79. Herz also discloses a negotiation, communicating with the seller computer system in a series of rounds in which the buyer computer system and the seller computer system successively propose one or more counter-modifications of the proposed flexible trade contract for automatic evaluation and possible acceptance to create the flexible trade contract (SEE Herz "...Automatically take certain actions...", means the capability to participate in more of one round of the negotiation, Col. 61, lines 19-50). Therefore, it would have been obvious to one having ordinary skill in the art in the time the invention was made to utilize such .as a step in the Schmidt / Herz / Maes / Shepherd invention. One would be motivated to include such as a step in order to facilitate the quickly conclusion of the negotiation,

Claim 93: Schmidt / Herz / Maes / Shepherd disclose a system for multi-enterprise optimization at a buyer computer system, comprising:  
means for accessing a forecasted demand for at least one item;

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automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item;

means for, automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;

means for, automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract;

means for, automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the modification is acceptable;

means for, automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, accepting the modification if the modification is acceptable;

and means for, subsequent to execution of a flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative

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negotiation, taking one or more actions to perform under the executed flexible trade contract, as was discussed above in Claims 1, 15, 29, 45, 63, and 78.

Claim 94: Schmidt / Herz / Maes / Shepherd disclose a method of multi-enterprise optimization at a buyer computer system, comprising:

- accessing a forecasted demand for at least one item;
- automatically and without user input subsequent to accessing the forecasted demand, generating one or more proposed flexible trade contracts using the forecasted demand for the item; automatically and without user input subsequent to generating the proposed flexible trade contracts, communicating each proposed flexible trade contract to a seller computer system to initiate an automatic collaborative negotiation over the proposed flexible trade contract with the seller computer system;
- automatically and without user input subsequent to communicating the proposed flexible trade contract, as part of the automatic collaborative negotiation, receiving at least one modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the proposed flexible trade contract; automatically and without user input subsequent to receiving the modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the modification to determine whether the first modification is acceptable; automatically and without user input subsequent to evaluating the modification of the proposed flexible trade contract, as part of the automatic collaborative negotiation, generating a first counter-modification. to the modification if the modification is not acceptable;

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automatically and without user input subsequent to generating the first counter modification to the modification, as part of the automatic collaborative negotiation, communicating the first counter-modification to the seller computer system for automatic evaluation and possible acceptance;

automatically and without user input subsequent to communicating the first counter modification, as part of the automatic collaborative negotiation, receiving at least one second counter-modification of the proposed flexible trade contract from the seller computer system for automatic evaluation and possible acceptance in response to communicating the first counter modification; automatically and without user input subsequent to receiving the second counter modification of the proposed flexible trade contract from the seller computer system, as part of the automatic collaborative negotiation, evaluating the second counter-modification to determine whether the second counter-modification is acceptable;

as part of the automatic collaborative negotiation, communicating with the seller computer system in a series of rounds in which the buyer computer system and the seller computer system successively propose one or more further counter-modifications of the proposed flexible trade contract for automatic evaluation and possible acceptance to create a flexible trade contract based on the proposed flexible trade contract; and subsequent to execution of the flexible trade contract created based on the proposed flexible trade contract as a result of the automatic collaborative negotiation, taking one or more actions to perform under the executed flexible trade contract, as was discussed above in Claims 1, 15, 29, 45, 63, and 78.

### Conclusion

7. The prior art made of record and not relied upon is considered very pertinent to applicant's disclosure.

"RIGHTWORKS AND I2 TECHNOLOGIES ADD PROCUREMENT TO RHYTHM SOLUTIONS DELIVERING TOTAL SUPPLY CHAIN OPTIMIZATION AND EXECUTION", PR Newswire. New York: Oct 11, 1999. pg.1 teaches; "It provides dynamic decision-making capabilities including support for strategic trading processes and access to real-time, advanced planning applications. With this agreement, Rightworks will be integrated within TradeMatrix." . . . "Its Web-based applications allow customers to automate and manage the procurement, tracking and reporting of goods and services for the enterprise and its trading partners. "

"RIGHTWORKS 4 EXTENDS PROCUREMENT SOLUTIONS TO NEW MARKET", PR Newswire. New York: Aug 10, 1999. pg. 1 teaches; "automating and managing procurement operations throughout the enterprise" . . . "RightWorks 4 improves enterprise productivity through employee self-service and transactional automation. With its new features and enhancements it allows different organizations to buy specific products and services for multiple vendors using their own business rules all from a single host system." . . . "RightWorks 4 moves beyond automating paper – based procurement and increasing productivity to a system that both saves money and generates revenue".

"MOAI TECHNOLOGIES INTRODUCES NEW CATEGORY OF BUSINESS-TO-BUSINESS AUCTION SOFTWARE THAT ENABLES VIRTUAL PRIVATE



MARKETPLACES”, Business Wire. New York: Mar 16, 1998. pg. 1 teaches; “Moai’s product automates companies inventory negotiation processes, enabling real-time commerce transaction. In doing so, LiveExchange 2.0 enables corporations to achieve higher revenues, improved control of their sales channel, reduced inventory overhead, and increased profitability.”

“CLARUS EXTENDS NETWORK SERVICES WITH NEGOTIATED E-COMMERCE SOLUTIONS FROM MOAI”, business Wire. New York: Apr 14, 2000. pg. 1; teaches; “Moai is a leading provider of negotiated e-commerce solutions for online auctions, online procurement and eMarketplaces. Negotiated e-commerce involves the buying and selling of goods and services online through flexible transaction models that change over time based on multiple terms **such as** price, condition of goods, warranty and shipping costs. Moai solutions address the unique challenges faced by companies looking to initiate or expand their e-commerce initiatives in the technologically complex and rapidly changing Internet business climate. While Moai primary focus is on customers in the business-to-business market, the company also has customers in the business-to-consumer and consumer-to-consumer markets”.

“CONCUR AND MOAI PARTER TO DELIVER BUSINESS-TO-BUSINESS NEGOTIATED ELECTRONIC COMMERCE SERVICES”, PR Newswire. New York: Apr 4, 2000. pg. 1. teaches; “Moai is a leading provider of negotiated e-commerce solutions addressing the needs of Global 2000 and net market maker customers. Moai’s LiveExchange solutions are designed to enable companies to create scalable, flexible

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**trading** exchanges and online auctions with broad functionality to rapidly increase revenues, cut costs, and strengthen their competitive position. With its LiveExchange solutions, Moai provides strategic and operational advantages to a variety of industries including computer/high tech, transportation and logistics, wholesale distribution, and manufacturing. To enable a comprehensive negotiated exchange solution, Moai has developed partnerships with several technology, consulting, and systems integration partners. “

“ADVANCED MANUFACTURING ONLINE –AMO- ANNOUNCES NEW TRADING PLATFORM”, Business Wire. New York: Dec 14, 1999. pg. 1. teaches; “By integrating Moai’s LiveExchange and Intelligent/ Digital’s Commerce O/S, Moai provides customers with a solution that **facilitates negotiation** based on multiple variables, including price, quantity, delivery time, product specifications and related service elements.”

Dr. Pattie Maes, “SMART COMMERCE : THE FUTURE OF INTELLIGENT AGENTS IN CYBERSPACE”, Journal of Interactive Marketing. Summer 1999. Vol. 13, Iss. 3; pg. 66 (11 pages). Teaches; “Dr. Maes has helped to commercialize agent technology software.”. . . .”HOW AGENTS AUTOMATE NEED IDENTIFICATION”. . . . “HOW AGENTS AUTOMATE PRODUCT BROKERING”. . . .”HOW AGENTS AUTOMATE MERCHANT BROKERING”. . . .”HOW AGENTS AUTOMATE NEGOTIATION” .

Thomas W. Sandholm (WO 99/06933) “LEVELEED COMMITMENT CONTRACTING SYSTEM” teaches; “This invention relates to the field of contracting

protocols and, more particularly, to contracting protocols for automated negotiations that can be implemented in connection with computer networks”.

John T. Rickard (U.S. 6,112,189) “METHOD AND APPARATUS FOR AUTOMATING NEGOTIATIONS BETWEEN PARTIES”, teaches; “For automatically negotiating agreements between multiple parties, a computer accepts a satisfaction function from an offering party who defines his degree of satisfaction to agree to a range of terms upon which the party is desirous of negotiating as a function of the relevant decision variables. The computer then accepts input from all other parties regarding their degree of satisfaction to agree to each of the terms as a function of a particular relevant decision variable. The computer then calculates a satisfaction function for each of these terms based on all of the individual inputs. Next, the computer calculates a joint satisfaction function for all of the terms as a function of the particular relevant decision variable, and then calculates the mutual satisfaction function for the offering party and the other parties, also as a function of the particular relevant decision variable. Finally, the computer calculates the set of decision variable yielding the maximum mutual satisfaction and provides this output to the parties.”

Conklin et al. (U.S. 6,141,653) “SYSTEM FOR INTERACTIVE, MULTIVARIABLE NEGOTIATIONS OVER A NETWORK”, “An apparatus for processing multivariate negotiations, comprising: a network; a multivariate negotiations system including storage space, and negotiations software, such negotiations software including an automated negotiations engine for analyzing terms, the analysis of terms comprising understanding the purpose of the terms, formatting the terms according to the purpose,

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and placing them into user supplied context for use by a user, the multivariate negotiations system being connected to the network".


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Bell whose telephone number is (703) 306-3019. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Sough can be reached at 703-308-0505.

Information regarding the status of an application may be obtained from Patent Application Information Retrieval (PAIR) system, see <http://pair-direct.uspto.gov>. For help with PAIR call Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any response to this action should be mailed to:

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Or Faxed to: (703) 872-9306

  
Paul Bell  
Art unit 3628  
March 2, 2005

  
HYUNG SOUGH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600